

Message Text

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C O N F I D E N T I A L STATE 306185

E.O. 11652: GDS TAGS: MARR, AFIN, JA

SUBJECT: DE MAURO CLAIM

REFS: STATE 271470 AND PREVIOUS

1. IN NOVEMBER 12 HEARING, COURT DENIED JUSTICE DEPARTMENT ATTEMPTS TO DISMISS DE MAURO CLAIM ON THE BASIS THAT THE CLAIM WAS, ON ITS FACE, OUTSIDE THE COURT'S JURISDICTION, AND ORDERED THAT THE PRELIMINARY JURISDICTIONAL QUESTION BE FULLY BRIEFED AND ARGUED. A FULL ARGUMENT ON THIS ISSUE IS SET FOR JANUARY 18. JUSTICE ATTORNEYS STILL EXPECT TO LOSE THIS ISSUE AND EVENTUALLY TO LOSE ON MERITS AS WELL.

2. AT JANUARY 18 HEARING, JUSTICE ATTORNEYS EXPECT COURT TO ASK WHAT USG HAS DONE TO PRESS CLAIM AGAINST GOJ SINCE USG'S JURISDICTIONAL ARGUMENT RESTS PRIMARILY ON THE GROUND THAT GOJ, NOT USG, IS LIABLE. WE WILL BE PROVIDING A LETTER TO JUSTICE NOTING REPEATED INFORMAL CONTACTS AND GOJ FAILURE TO TAKE APPROPRIATE ACTION. STATE AND JUSTICE ATTORNEYS BELIEVE, HOWEVER, USG'S POSITION IN COURT WOULD
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BE ENHANCED IF A FORMAL APPROACH AS WELL WERE NOW MADE TO GOJ.

3. IF USG LOSES LITIGATION OR REACHES OUT OF COURT SETTLEMENT WITH DE MAURO, WE WILL BE COMPELLED TO GO TO GOJ AND SEEK COMPENSATION. WE DO NOT WISH GOJ TO

BE ABLE TO RAISE THE DEFENSE THAT IT IS BEING PRESSED TO PAY A CLAIM THE VALIDITY OR VALUATION OF WHICH IT HAD NO OPPORTUNITY TO DISPUTE. IT SEEMS ADVISABLE FROM THIS VIEWPOINT AS WELL, THEREFORE, TO REITERATE FORMALLY FOR THE RECORD OUR OFFER TO THE GOJ TO PARTICIPATE IN THE PENDING LITIGATION OR IN ANY SETTLEMENT NEGOTIATIONS IN THE EXPECTATION THAT THE GOJ WILL DECLINE TO DO SO.

4. UNLESS EMBASSY FORESEES PROBLEMS IN THIS APPROACH, WE REQUEST THAT IT DELIVER THE FOLLOWING NOTE REITERATING OUR CONTENTION THAT GOJ IS RESPONSIBLE FOR THE DE MAURO CLAIM, AND INVITING GOJ TO PARTICIPATE IN ANY LEGAL PROCEEDINGS OR SETTLEMENT NEGOTIATIONS WHICH MAY ESTABLISH AMOUNT AND/OR VALIDITY OF THE CLAIM. IN VIEW OF IMMINENT HEARING DATE, PROMPT DELIVERY WOULD BE HELPFUL.

5. TEXT OF SUGGESTED NOTE FOLLOWS:

QUOTE. THE EMBASSY OF THE UNITED STATES OF AMERICA HAS THE HONOR TO REFER TO THE CLAIM OF THE DE MAURO CONSTRUCTION CORPORATION, A UNITED STATES CORPORATION, FOR COMPENSATION FOR SERVICES RENDERED IN THE CONSTRUCTION OF A DAM ON OKINAWA FOR THE BENEFIT OF THE RYUKYU DOMESTIC WATER CORPORATION, TO PERIODIC DISCUSSIONS BETWEEN THE EMBASSY AND THE MINISTRY OF FOREIGN AFFAIRS CONCERNING THE CLAIM, AND TO ARTICLE VI OF THE AGREEMENT CONCERNING THE RYUKYU AND THE DAITO ISLANDS OF JUNE 17, 1971.

IN 1967, THE UNITED STATES ARMY CORPS OF ENGINEERS ENGAGED THE DE MAURO CONSTRUCTION CORPORATION TO PERFORM
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CERTAIN CONSTRUCTION FOR A DAM ON OKINAWA. THE UNITED STATES ARMY CORPS OF ENGINEERS, IN SO ENGAGING THE DE MAURO CONSTRUCTION COMPANY, WAS ACTING AT THE BEHEST OF THE RYUKYU DOMESTIC WATER CORPORATION. TO THE BEST OF THE EMBASSY'S KNOWLEDGE, DE MAURO PERFORMED ITS OBLIGATIONS UNDER THE CONTRACT SATISFACTORILY.

ARTICLE VI, PARAGRAPH 1 OF THE AGREEMENT OF JUNE 17, 1971, PROVIDES AS FOLLOWS:

THE PROPERTIES OF THE RYUKYU ELECTRIC POWER CORPORATION, THE RYUKYU DOMESTIC WATER CORPORATION AND THE RYUKYU DEVELOPMENT LOAN CORPORATION SHALL BE TRANSFERRED TO THE GOVERNMENT OF JAPAN ON THE DATE OF ENTRY INTO FORCE OF THIS AGREEMENT, AND THE RIGHTS AND OBLIGATIONS OF THE SAID CORPORATIONS SHALL BE ASSUMED BY THE GOVERNMENT OF JAPAN ON THAT DATE IN CONFORMITY WITH THE LAWS

AND REGULATIONS OF JAPAN.

AT THE TIME OF THE CONCLUSION OF THIS AGREEMENT, THE DE MAURO CONSTRUCTION COMPANY HAD YET TO BE COMPENSATED FOR THE AFOREMENTIONED CONSTRUCTION WORK. IT IS THE OPINION OF THE U.S. GOVERNMENT, PREVIOUSLY EXPRESSED IN DISCUSSIONS BETWEEN THE EMBASSY AND THE MINISTRY OF FOREIGN AFFAIRS, THAT THE OBLIGATION TO COMPENSATE DE MAURO WAS ONE OF THE OBLIGATIONS ASSUMED BY THE GOVERNMENT OF JAPAN UNDER PARAGRAPH 1 OF ARTICLE VI.

THE DE MAURO CONSTRUCTION COMPANY, HAVING FAILED TO OBTAIN COMPENSATION FROM EITHER THE RYUKYU DOMESTIC WATER CORPORATION, LOCAL GOVERNMENT AUTHORITIES IN THE RYUKYUS, OR THE GOVERNMENT OF JAPAN, HAS NOW BROUGHT SUIT AGAINST THE U.S. GOVERNMENT IN THE U.S. COURT OF CLAIMS FOR PRIMARY LIABILITY UNDER DE MAURO'S CONTRACTS WITH THE U.S. ARMY CORPS OF ENGINEERS. SHOULD THE U.S. GOVERNMENT BE CONFIDENTIAL

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ADJUDGED TO BE PRIMARILY LIABLE UNDER THOSE CONTRACTS, THE U.S. GOVERNMENT WILL EXPECT TO BE REIMBURSED FOR ANY SUCH JUDGMENT BY THE GOVERNMENT OF JAPAN IN ACCORDANCE WITH THE LATTER'S OBLIGATIONS UNDER ARTICLE VI, PARAGRAPH 1 OF THE AGREEMENT OF JUNE 17, 1971. IT IS ALSO POSSIBLE THAT THE U.S. GOVERNMENT MAY CHOOSE TO FOREGO FURTHER LITIGATION ON THE ISSUE OF PRIMARY LIABILITY UNDER THE CONTRACT AND SETTLE THE DE MAURO CLAIM OUT OF COURT. IN THAT EVENT AS WELL, THE U.S. GOVERNMENT WOULD, IN ACCORDANCE WITH ARTICLE VI, PARAGRAPH 1 OF THE AGREEMENT, EXPECT TO BE REIMBURSED BY THE GOVERNMENT OF JAPAN IN THE AMOUNT OF ANY SUCH SETTLEMENT.

BECAUSE THE U.S. GOVERNMENT WILL, THEREFORE, EXPECT THE GOVERNMENT OF JAPAN TO BEAR THE COST OF THE DE MAURO CLAIM IN ANY EVENT, THE U.S. GOVERNMENT WISHES TO RENEW FORMALLY ITS PREVIOUS OFFERS TO THE GOVERNMENT OF JAPAN OF THE OPPORTUNITY TO PARTICIPATE IN ANY LEGAL PROCEEDINGS OR SETTLEMENT NEGOTIATIONS WHICH MAY ESTABLISH THE AMOUNT AND/OR VALIDITY OF THAT CLAIM. SINCE THE NEXT FORMAL PROCEEDING IN THE U.S. COURT OF CLAIMS IS SCHEDULED FOR JANUARY 18, 1977, A RESPONSE AT YOUR EARLIEST CONVENIENCE WOULD BE APPRECIATED.

COMPLIMENTARY CLOSE. UNQUOTE.
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